

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BENJAMIN PAEZ,

Plaintiff,

vs.

M. J. NUTSCH, NSP Troop E. Badge # 321,

Defendant.

4:20CV3108

**MEMORANDUM
AND ORDER**

Plaintiff has filed a motion to compel Defendant to subpoena evidence from the Nebraska State Patrol. (Filing 35.) The motion will be denied. Defendant has no obligation to undertake discovery on Plaintiff's behalf.¹

IT IS THEREFORE ORDERED that Plaintiff's motion to compel discovery (Filing 35) is denied.

Dated this 10th day of January 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge

¹ Plaintiff states Defendant must prove that Plaintiff's allegations are untrue. This is incorrect. As the court has previously explained, "a plaintiff has the burden of proof in a § 1983 action claiming a Fourth Amendment violation for a warrantless search." *Paez v. Nutsch*, No. 4:20CV3108, 2021 WL 2652456, at *3 (D. Neb. June 28, 2021) (citing *Der v. Connolly*, 666 F.3d 1120, 1127 (8th Cir. 2012)). Defendant has the burden of producing evidence that an exception to the warrant requirement applies, *see id.*, but this burden of production does not mean that Defendant must obtain evidence for Plaintiff.